

))

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 6497 of 1999

to

FIRST APPEAL No 6534 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE D.P.BUCH

=====

1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

PATEL BHAGVANBHAI MADHAVLAL

Appearance:

MR VM PACHOLI AND MS PUNANI ASSTT GOVT PLEADER for Petitioners
MR PK JANI for Respondent No. 4

CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE D.P.BUCH

ORAL JUDGEMENT

#. The appellants have filed this group of First Appeals under Section 54 of the Land Acquisition Act, 1894 (to be referred to as the "Act" for short) read with Section 96 of the Code of Civil Procedure, challenging the judgment and award dated August 14, 1998 passed by the learned Assistant Judge, Mehsana in Land Acquisition Reference Nos. 2201 / 91 to 2238 / 91. As common questions of facts and law are involved in these First Appeals, we propose to dispose of them by this common judgment.

#. Agricultural lands of the respondents situated in town Unjha were placed under acquisition for the public purpose of Sipu Project by issuance of notification under Section 4(1) of the Act published in the Government Gazette on August 17, 1989. After following usual procedure under the Act, declaration under Section 6 of the Act which was published in the official gazette on August 16, 1990. The respondents were served with the notices under Section 9(3)(4) of the Act by land acquisition officer. The respondents appeared before the land acquisition officer and claimed compensation of the acquired lands. The land acquisition officer on the basis of the materials placed before him made his award on June 25, 1991 and offered compensation for the acquired lands at the rate of Rs.2.50 per sq.mtrs. The respondents were of the opinion that the compensation offered by the land acquisition officer were inadequate and therefore they filed application under Section 18 of the Act requiring the land acquisition officer to refer their applications to the District Court, Mehsana for determination of the market value of acquired lands. Accordingly, said applications were referred to the District Court by the Land Acquisition Officer which came to be numbered as Land Acquisition Reference Nos.220/91 to 2238/91. Before the appellate court, the claimants claimed compensation for acquired lands situated at village Unjha at the rate of Rs.200/per sq.mtrs. It was pleaded by the respondents in their applications filed under Section 18 of the Act because of acquisition of their lands, they had suffered considerable damages; that acquired lands were having high fertility and potential value; that, village Unjha was having facilities of railway, national high way, cooperative societies, transport companies, branches of several nationalised banks and there was biggest market yard situated within parameters of village Unjha. It was pleaded that looking to the facilities available in the village, and fertility of lands, the claimants ought to have been awarded higher

compensation.

#. The reference applications were contested by the appellants by filing their reply at Exh.4, inter alia, contending that the land Acquisition Officer, while making his award, had offered just and adequate compensation for acquired lands to the respondents. The Land Acquisition Officer had taken into consideration prevalent market price of acquired lands at the relevant date and had fixed market price of acquired lands. The appellants denied that, on account of acquisition, rest of agricultural lands have become uncultivable. It was further pleaded that compensation claimed by the claimants was excessive and therefore the applicants be dismissed with costs.

#. On rival assertions of the parties, the Reference Court framed issues at Exh.5 in Land Reference Case No.2202/91, which was treated as main case, wherein common evidence was led by the parties. To substantiate their claim, the respondents examined Patel Ambalal Bajidas, who was claimant of Land Acquisition Reference No. 2202/91, was examined at Exh.7. The said witness deposed that all acquired land were having similar situation, fertility and were situated in the outskirts of village Unjha. He deposed that all the claimants were raising two crops in a year. He further deposed that town Unjha was fully developed was situated on main railway line of Ahmedabad - Delhi and was also situated on National High Way. He claimed that industrial development had taken place near the lands and many industries, oil mills etc. were established before the acquisition. He claimed that there was biggest market yard situated at town Unjha. He further claimed that town Unjha was connected with the inter national business and there were so many transport companies, branches of scheduled and cooperative banks etc and in Unjha was having hospitals, colleges, schools, telephone exchange, works works, T. P. Scheme drainage system, Nagarpalika etc. The witness during his deposition produced certified copy of the judgment and award rendered in Land Acquisition Case No. 19 / 84 to 34 / 84 wherein, Reference Court, Mehsana has awarded the compensation ranging between at rates of Rs.55/- to Rs.135/- per sq.mtrs for that lands situated at very same village Unjha for which the required under Section 4 of the Act was published in a Government Gazette dated 11-6-1981. The witness also produced a certified copy of the judgment and award in Land Reference Case No. 234 / 90 to 251/90 dated 23rd February, 1995 decided on 23rd February, 1995, wherein, the Reference Court has awarded

the compensation at the rate of Rs.105/- per sq.mtrs for the lands situated at village Unjha for which required notification under Section 4 of the Act was published in a Government Gazette dated 11-6-1981. The witness further produced certified copy of the judgment and award in Land Acquisition Reference Case Nos. 26 to 28 /1982 decided on 22-1-1985, wherein, the Reference Court granted and determined the market rate of the acquired land which was acquired on March 12, 1981 at the rate of Rs.24/- per sq.mtrs. The witness also produced another copy of the judgment and award at Exh. 14 rendered in L.A.R. Nos. 80/91 to 90/91 decided on July 25, 1997, wherein, the market price of the lands acquired on January 19, 1989 was determined by the Reference Court at the rate of Rs.40/- per sq.mtrs.

#. The Reference Court by relying on the previous award, determined the market value of the present acquired land at the rate of Rs.35/- per sq.mtrs as on August 17, 1989 which has given rise to filing of this group of appeals by the appellants.

#. The learned AGP Mr.V. M. Pancholi and the learned counsel for the respondents Mr.P.K. Jani has taken us to the entire record and proceedings. The learned AGP has submitted that the Reference Court had erred in relying on previous award which was not at all relevant and comparable for the determination of the market value of the present acquired lands and therefore, these appeals deserve to be admitted and allowed.

#. None of the contentions raised by the learned AGP, in our opinion, does not deserves any merits. It is one of the mode of assessment of the compensation to rely on previous award of adjoining lands or lands of the same village, the notification of which was published in the near proximity of time. The previous award were awarded in the year 1989 and the Reference Court had determined the market value of the land at the rate of Rs.40/- per sq.mtrs. The notification of the present acquired land was also published on August 17, 1989 and the lands of the previous award and the present acquired lands were of the same village town - Unjha having same comparable features, we are of the opinion that the Reference Court has not committed any error in placing reliance on previous award, by which, the market value of the acquired land of town Unjha were determined at Rs. 40/per sq.mtrs. We may add here that on the contrary, the Reference Court determined the market value of the present acquired lands at the rate of Rs.35/- per sq.mtrs as on August 17, 1989 which is on the lower side. It may

also be mentioned that in First Appeals No.4702 / 97 to 4715 / 1997, this Court while dismissing the appeals had confirmed the market value and determined for the acquired lands of town Unjha as on January 18, 1989 at the rate of Rs.40/- per sq.mtrs. Yet in another First Appeals No. 4707 / 99 to 4739 / 99 decided on August 1, 2000, this very Bench had confirmed the determination of the market value of the acquired land of town Unjha as on January 18, 1989 at the rate of Rs.40/- sq.mtrs. Bearing in mind the above previous award, the market value determined by the Reference Court for the present group of Appeals cannot be said to be excessive. On the contrary, the Reference Court had awarded just and adequate and reasonable compensation to the respondents for the acquired lands.

#. For the foregoing reasons, these appeals being meritless deserve to be dismissed summarily. The statutory benefit extended in favour of the claimants is hereby confirmed but it is clarified that the claimants shall not be entitled to interest on solatium as per the decision rendered by the Supreme Court in case of STATE OF MAHARASHTRA VS. MAHARAU SRAWAN HATKAR, reported in Judgment Today 1995 (2), S.C. 583.

[M. H. Kadri, J.]

Date : 9-8-2000 [D. P. Buch, J.]

#kailash#